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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

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# No. 336

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UNITED STATES OF AMERICA ex REL. COSTAS CATECHES, PETITIONER,

*vs.*

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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HAROLD VAN RIPER,
*Attorney for Petitioner,*
1 *Broadway, New York, N. Y.*

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UNITED STATES OF AMERICA ex REL. COSTAS CATECHES, PETITIONER,

*vs.*

BENJ. M. DAY, U. S. COMMISSIONER OF IMMIGRATION, RESPONDENT.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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*To the Honorable the Justices of the Supreme Court of the United States of America:*

Petitioner herein, by his attorney, Harold Van Riper, respectfully shows:

The Writ of Habeas Corpus herein was dismissed without opinion by Hon. Francis J. Caffey, U. S. District Judge, Southern District of New York, on Sept. 17th, 1929 (R. 23).

On May 5th, 1930, the U. S. Circuit Court of Appeals, 2nd Circuit, without opinion, affirmed the Court below (R. 33), and has stayed its mandate.

Costas Cateches, a Greek seaman, was arrested on May 8th, 1929 (R. 46), under a warrant of arrest issued by the Secretary of Labor on May 3, 1929, containing the sole charge, presumably under Sec. 14 of the Immigration Act of May 26, 1924 (8 U. S. C. A. 214), that

> "He has remained in the United States for a longer time than permitted under the said Act of Regulations made thereunder" (R. 39),

and, at the conclusion of the hearings accorded the alien under said warrant the immigration authorities made a finding of fact to the effect that the alien had deserted his vessel in Boston, Mass., on or about Oct. 1, 1925 (R. 60), more than three years prior to his said arrest; wherefore, on June 11, 1929, a warrant issued for his deportation to Greece (R. 63).

Said decision of the Circuit Court of Appeals, Second Circuit, sought to be reviewed, in effect sustains the contention of the administrative branch of the government that Section 14 of the Immigration Act of May 26, 1924 (8 U. S. C. A. 214), applies not only to alien seamen regularly admitted under Sec. 3-(5) of said act (8 U. S. C. A. 203) for the purpose of reshipping foreign, as provided for in Sec. 33 of the Act of Feb. 5, 1917 (8 U. S. C. A. 168), and who remain for a longer time than the sixty day period permitted by regulation, but as well to alien seamen who desert their vessels without being regularly admitted and whose cases pe-

titioner respectfully submits fall solely within the provisions of Sec. 34 of the Act of 1917 (8 U. S. C. A. 166), which prohibits their arrest and deportation more than three years after their illegal entry.

The question involved herein is an important one because similar cases are constantly arising in the various circuits and said decision is in conflict with two decisions of the Circuit Court of Appeals for the Ninth Circuit, Nagle *vs.* Hansen, 17 F. (2d) 557, and *Ex Parte Bildt*, 32 F. (2d) 894, the first of which decisions has been frequently cited as an authority.

## Single Question Presented.

The instant case involves only one question of law: Are seamen who desert their vessels without being regularly temporarily admitted under Sec. 3-(5) of the Immigration Act of May 26, 1924 (8 U. S. C. A. 203), for the purpose of reshipping foreign on another vessel within sixty days after such admission as provided by Sec. 33 of the Immigration Act of February 5, 1917 (8 U. S. C. A. 168), and who remain unlawfully in the United States for more than three years, subject to deportation at any time under Sec. 14 of the Immigration Act of May 26, 1924 (8 U. S. C. A. 214), which by its terms applies only to seamen regularly temporarily admitted and who remain beyond said sixty-day period; or is their deportation barred by the three-year limitation fixed by section 34 of the Immigration Act of February 5, 1917 (8 U. S. C. A. 166), which section applies solely to aliens whose *landing* is unlawful?

## Reasons for the Petition.

The reasons for which the petition is presented are:

(1) That the Circuit Court of Appeals has decided an important question of Federal law, which has not been, but should be, settled by this Court (Rule 35).

(2) That the Circuit Court of Appeals for the Second Circuit has rendered a decision in conflict with decisions of the Circuit Court of Appeals for the Ninth Circuit on a similar question, namely, U. S. *ex rel.* Nagle *v.* Hansen, 17 F. (2d) 557, and *Ex Parte* Bildt, 32 F. (2d) 894.

Wherefore petitioner respectfully prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit, and submits his brief hereto attached in support of this petition.

Respectfully submitted,

HAROLD VAN RIPER,
*Attorney for Petitioner,*
1 *Broadway, New York, N. Y.*

United States of America,
*State and Southern District of New York, ss:*

Harold Van Riper, being duly sworn, says that he is a member of the bar of the Supreme Court of the United States, is the attorney for the petitioner herein, and is duly authorized by said petitioner to make and execute this petition on his behalf; that he had read the foregoing petition and knows the contents thereof,

and that the matters therein stated are true to the best of his knowledge, information, and belief. Deponent certifies that he has examined the foregoing petition and the record herein, and that in his opinion it is well founded, meritorious, and entitled to the favorable consideration of this Court.

HAROLD VAN RIPER.

Sworn to before me this 5th day of August, 1930.

[SEAL.] ALBERT E. ARDITTI,
*Notary Public, New York County.*

New York Co. Clerk's No. 213, Register's No. 1A280.
Commission expires March 30, 1931.

SUPREME COURT OF THE UNITED STATES.

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## BRIEF IN SUPPORT OF THE FOREGOING PETITION.

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The question herein raised is identically the same as that presented in the case of Philippides *vs.* Day, in which this Honorable Court recently granted a writ of certiorari, and it is respectfully prayed that a writ of certiorari be granted herein.

HAROLD VAN RIPER,
*Attorney for Petitioner,*
1 *Broadway, New York, N. Y.*